

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1455 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALASINOR NAGRIK SAHKARI BANK LTD

Versus

STATE OF GUJARAT

Appearance:

MR PM RAVAL for Petitioner

MR SAMIR DAVE for Respondent No. 1 & 3

MR RM VIN for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/10/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a cooperative bank, filed this writ petition before this Court feeling aggrieved of the decision and order dated 4th March 1987 passed by the Deputy Secretary (Appeals), Co-operation Department, Gujarat State, under which directions were given to the petitioner to supply copy of the audit memo for the year 1984-85 to the

respondent No.4.

2. The impugned order has been passed by the aforesaid authority on the revision application filed by respondent No.4. Section 33 of the Gujarat Cooperative Societies' Act 1961 (hereinafter referred to as the 'Act 1961') provides that every member of a society shall be entitled to inspect, free of cost, at the society's office during office hours or any time fixe for the purpose by the society, a copy of the Act, the rules and the bye-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the committee, a register of members, the minutes of general meeting, and those portions of the books and records in which his transactions with the society have been recorded. It has further been provided by the said Section that a society shall furnish to a member on request in writing and in payment of such fees as may be prescribed thereof, a copy of any of the documents mentioned in sub-section (1) of Section 33.

3. Under the impugned order, the petitioner was directed to supply to the respondent No.4, the audit memo of the Bank for the year 1984-85. The learned counsel for the petitioner contended that this document, inspection of which has been prayed for by respondent No.4, does not fall under Section 33 of the Act 1961 and as such, the order impugned in this Special Civil Application is wholly illegal and arbitrary. The learned counsel for the respondent No.4, on the other hand, contended that he has no instruction. The learned counsel for other respondents is unable to satisfy this Court how this document, inspection of which has been prayed by respondent No.4, fall under Section 33 of the Act 1961. When the inspection of this document is not permissible under Section 33, the learned counsel for the petitioner contended that there is no question of giving a copy of the said document under the provisions of the aforesaid Act to respondent No.4. Though it has not been disclosed very specifically what is the status of respondent No.4 in the society, but the learned counsel for the petitioner contended that the respondent No.4 was only a member in the said society. The claim of the respondent No.4 for giving of the copy of audit memo of the Bank for the year 1984-85 does not fall under Section 33 of the Act 1961. Legislature intended to spell out rights of the members for having copies of certain documents and the legislature has spelt out specific documents under Section 33 of the Act 1961. A member, in view of the provisions of Section 33 of the Act 1961, would be entitled to get only copies of those documents

which are mentioned in Section 33 and not any other document not mentioned in the said Section. When the legislature had laid down specific provisions for the rights of members for copies of certain documents, then copies of only those documents mentioned therein could be provided for. It is not in dispute that the document audit memo has not been mentioned by the legislature in Section 33 of the Act 1961. If the legislature wanted to make specific provision for rights of the members for copies of certain documents other than those specified in Section 33, then it would have made such a provisions which is not a case here. The learned counsel for the petitioner, in support of his contention, relied on the decision of this Court given in Special Civil Application No.6558 of 1986 decided on 1.5.87, Coram: D.C. Gheewala,J. The learned counsel for the petitioner further contended that the decision aforesaid given by the learned Single Judge has also been confirmed by the Division Bench in L.P.A. No.248 of 1987, Coram: P.R. Gokulkrishnan, C.J. & G.T. Nanavati, J, decided on 2nd November 1987. I have gone through the aforesaid judgment and I am satisfied that the contention raised by the learned counsel for the petitioner is squarely covered by the decisions cited by him. The order impugned in this writ petition annexure 'H' dated 4.3.87 is quashed and set aside. It is a case where the respondent No.4 has unnecessarily dragged into litigation to the petitioner-Bank and the public money has been used by the Bank for filing of this litigation. The respondent No.4 is one of the members of the society and as such, it was equally obligatory for him to demand only such documents which are intended to be made available to the members of the society. In view of this fact, it is a fit case where exemplary cost has to be imposed on respondent No.4 so that the amount which has been spent in litigation by the Bank can be compensated.

4. In the result, this Special Civil Application is allowed. The respondent No.4 is directed to pay Rs.2,000/- by way of cost of this writ petition to the petitioner-Bank. Rule made absolute.

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(sunil)